



Connecting Child Welfare and Education Law

2013 Education of Foster Youth Summit
February 19-20, 2013

Speakers

- Joy Baskin, Director, Legal Services Division, Texas Association of School Boards
- Denise Brady, Senior CPS Policy Attorney, Texas Department of Family and Protective Services
- Montgomery Meitler, Assistant Counsel, Texas Education Agency

Presentation Overview

- What is the nexus between education law and child protection law?
- What existing federal and state laws may be used to improve education outcomes of students in foster care?
 - Enrollment
 - Credit
 - Education Decision-Making
 - Records
 - Special Education
 - And more!
- Questions and answers

Enrollment

- “To the Administrator” letter
- Who may enroll?
- Common issues
- Immediate enrollment
- Delays
- Special programs



TEA “To the Administrator Addressed” Letter 2012

- TEC §25.001(d) – Schools can decline admission if:
 - child has poor disciplinary history
 - child is living “separate and apart” from parent/guardian/other person having lawful control
- CANNOT be used to prevent admission if student eligible for admission under other provision of TEC §25.001 (i.e. homeless, placed in foster care)

5

Who May Enroll?

- TFC §153.371 – DFPS authorized to make educational decisions, including enrollment
- Task typically delegated to foster parent/caregiver/Education Decision Maker

6

What might schools see when foster child is enrolled?

- Child may have gaps in enrollment
- Child may have attended many schools
- Child may be behind in credits or achieving below grade level

7

Foster Youth = Immediate Enrollment

- 42 U.S.C. 675(1)(G)(ii) – if remaining in same school not in child's best interests, child welfare agency and local educational agencies must ensure
 - “immediate and appropriate enrollment” in new school
 - with all educational records provided to new school
- TEC §25.003(g) – school district shall accept for enrollment even without appropriate enrollment documentation
 - DFPS to ensure receipt of records within 30 days
- TFC §153.371 – DFPS shall ensure child returns to school by the 3rd school day after date order rendered giving possession to DFPS
 - unless physical/mental condition
 - then, DFPS to notify school in writing
 - upon improvement, immediate return

8

Possible Causes of Delay in Enrollment

- May be unclear who is responsible for enrollment
- Child may not have appropriate enrollment documentation or requirements (i.e. immunization records, birth certificate, uniform)
- Prior schools may not locate all records and/or transfer all credits

9

Free and Reduced-Price Lunch

- 42 U.S.C. § 1758(b)(5)(E) – foster youth categorically eligible to receive free meals in all USDA child nutrition programs
 - no need for additional application
 - covered by information in Form 2085

10

Virtual School Network

- Statewide source of online courses for Texas students
- Foster youth are eligible to enroll full-time
- Viable means of meeting graduation requirements/making up credits

11

Student's Whereabouts Unknown

- Withdrawal issues and credits
- Example: if student is not found and his/her whereabouts remain unknown:
 - district should decide withdrawal date for student who never officially withdrew (per local policy)
 - once withdrawn, student in grades 7-12 must be reported “school leaver” on 203 Record and
 - will possibly be considered dropout according to Section 2 of the PEIMS Data standards

12

Education Decision-Making

- DFPS as Managing Conservator
- DFPS delegation
- How will I know?
- Caseworker responsibilities
- Additional DFPS responsibilities
- Caregiver responsibilities



DFPS as Managing Conservator

- TFC § 153.371 – Court appoints DFPS as “Managing Conservator”
- Duties of a Managing Conservator include:
 - right to designate the primary residence of the child and to make decisions regarding the child’s education
 - physical possession of and duty to care for child
 - consent to medical care, access records

DFPS “Delegation”

- Court or DFPS “delegates” some education decisions to the caregiver
- “Caregiver” may be:
 - Foster parent
 - Relative caregiver
 - Residential facility staff
- Biological family may retain some rights (by court order)

15

How Will I Know Who Holds Rights?

- School can request court order giving DFPS managing conservatorship from person attempting to enroll student

OR

- School can accept FORM 2085 as evidence of court-ordered authority
 - FORM 2085 is a “Placement Authorization Form” that outlines the authority status of the holder of the form (usually the foster parent)

16

Caseworker (or Supervisor) Decisions and Responsibilities

- Selects the school, considering child's best interests
- Receives notice of, and takes action if necessary on, student removals, suspensions, expulsions, "tickets," or other disciplinary actions
- Ensures submission of corporal punishment "opt-out" form
- Ensures Portfolio and records transferred

17

Additional DFPS Responsibilities

- Ensures prior school receives official withdrawal notice
- Consults with caregiver regarding high-stakes decisions such as grade retention, course selection, referral for special education

18

Caregiver Responsibilities

- Enroll child in school or preschool within 3 days
- Provide and receive school records and notices about child
- Participate in school-related activities (PTA, parent-teacher conferences, field trips)
- Maintain Education Portfolio
- Ensure child or youth participates in extracurricular activities
- Ensures submission of corporal punishment "opt-out" form
- Class C ticketing



19

Records

- FERPA and confidentiality
- Uninterrupted Scholars Act
- TREx
- MOU between TEA and DFPS re: records transfer
- Role of Foster Care Liaisons within school districts
- AAL and GAL/CASA access to school records

High School Report Card

Student's Name _____

Grade _____ School Year _____

Grading Scale			
A	to		Excellent
B	to		Good
C	to		Average
D	to		Needs Improvement
F	Below		Must Be Retained

FERPA

- Family Educational Rights and Privacy Act of 1974 (20 U.S.C. § 1232g; 34 CFR Part 99)
- Federal law that protects the privacy of information in a student's educational records; applicable to educational agencies and institutions that receive funding under a program administered by the U.S. Department of Education
- Basic FERPA responsibility: educational agency or institution may not disclose personally identifiable information within education records to third parties without prior written consent of the parent or eligible student (*with exceptions*)
- Parents have the right to inspect and review and seek amendment to the education records of their children, and consent to the disclosure of information from those education records
 - Parent means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian

21

Uninterrupted Scholars Act

- Amends FERPA by expanding the list of organizations to which an educational agency or institution may release education records or identifiable information contained in such records without parental consent.
- Now includes an agency caseworker or other representative of a state or local child welfare agency or tribal organization authorized to access a student's case plan when such agencies or organizations are legally responsible for the care and protection of the student.

Conditions:

1. *education records or identifiable information will not be disclosed by such agency or organization, except to an individual or entity engaged in addressing student's education needs and authorized by such agency or organization to receive such disclosure; and*
2. *such disclosures must be consistent with applicable student record confidentiality laws of states and tribes.*

- Permits release of such records and information without additional notice to parents and students when parent is a party to court proceeding involving child abuse and neglect or dependency matters and a court order has already been issued in the context of that proceeding.

22

TREx

- TREx is a web-based application hosted by the Texas Education Agency (TEA) for transferring student records electronically between Texas public school districts and open enrollment charter schools.
- The TEA Student Attendance Accounting Handbook describes the following minimum information that must be transmitted when a student transfers from one Texas public school district or open enrollment charter school to another:
 - Student ID (Social Security Number or State-Approved Alternate ID);
 - Prior ID (Social Security Number or State-Approved Alternate ID, if different from above);
 - Local Student ID Number, if used;
 - County-District-Campus Number;
 - Campus Name and Phone Number;
 - First, Middle, and Last Name and Suffix of the student;
 - Gender, Ethnicity, and Date of Birth of the student;
 - Current Grade Level for the student; and
 - Immunization records.

23

TREx

- Additionally, section 7.010 of the Education Code requires the following information to be included with the student records sent through TREx. (Note that the IEP may be scanned and sent as an attached file.)
 - Student Course or Grade Completion
 - Teachers of Record
 - Student Assessment Results
 - Receipt of special education services, including placement in a special education program and development of an individualized education program (IEP)
 - Student's Personal Graduation Plan
- Registrars are encouraged to send all relevant information that is available through TREx when a student transfers from one school to another. While schools are not required to send copies of birth certificates or social security cards through TREx when a student transfers, these documents may be scanned and transmitted as attachments if the registrar chooses.

24

TREx

- Enrollment by a student in a school district constitutes authority for the sending district to release the education records of that student, regardless of whether parental authority has been received. (The federal Family Education Rights and Privacy Act (FERPA) 34 CFR Part 99, 99.31(a)(2) and 99.34.)
- By law (TEC §25.002(a-1)), a district must respond to a request for a student record from the receiving district within 10 working days after the date the request for information is received. The timely transfer of a student record is important for a student's appropriate instructional placement for continued education as well as for various reports and entries on the state assessment forms. TREx facilitates the process of responding to and fulfilling requests for records within the required timeframe.
- TEC §25.002 and FERPA 34 CFR Part 99, 99.31(a)(2) and 99.34 protect the right of access to the student record. Districts must protect the private information on student records and transcripts from unauthorized individuals. TREx encryption ensures protection of the data during transmission and within the TREx process; however, once the data are downloaded, data security becomes the responsibility of the receiving school district/campus.

25

TEA / DFPS MOU

- Pursuant to section 25.007(b)(6) of the Education Code, TEA entered into a memorandum of understanding with DFPS regarding the exchange of information as appropriate to facilitate the transition of students in substitute care from one school to another.
- Under the MOU, DFPS:
 - Provides data sets to enable TEA to compile reports concerning timeliness of records transfer for the population of children in substitute care.
 - Notifies TEA TREx Help Desk personnel of the names of students in substitute care whose records have not been transferred within ten business days.
 - Notifies TEA concerning school districts that delay either the request or transfer of educational records.
- Under the MOU, TEA:
 - Utilizes information provided by DFPS regarding districts that have delayed a request for a student's education records, or provision thereof, to offer the district technical assistance with TREx.
 - Develop an annual report using a data set of children in substitute care provided by DFPS to determine the frequency with which the records of these children are transferred from one educational setting to another.
 - Educate districts on the importance of maintaining educational stability for children in foster care (Aug. 8, 2012 To the Administrator Addressed letter: Importance of Maintaining Educational Stability for Children and Youth in the Foster Care System; providing direction and technical assistance concerning credit transfer and/or recovery, Texas Virtual School Network, distance learning, online courses, and on-site classes with instructional support).

26

School District Foster Care Liaisons

- TEC § 33.904 – each school district shall appoint at least one employee to act as a liaison officer to facilitate the enrollment in or transfer to a public school of a child in the district who is in the conservatorship of the state.
- To register your district's liaison(s) with TEA, please send an email with the name, position, and contact information of the designated *School District Foster Care Liaison(s)* to fostercareeducation@tea.state.tx.us.
- Also, please complete the *Foster Care Liaison Introductory Survey* at <https://www.surveymonkey.com/s/Fostercareliaisons>.
- To make sure your district has access to the most current information in Texas, join the Foster Care Education Listserv. Go to: <http://ritter.tea.state.tx.us/list/> and select 'Foster Care Education.'

27

School District Foster Care Liaisons

- School District Foster Care Liaison duties may include:
 - Streamline enrollment processes for students in foster care with school registrars and front office staff, and overall ease enrollment in a new school for students
 - Help coordinate records transfer and credit recovery by working with school staff to make sure students' records and credits are transferred through the TREx system in a timely manner; may also coordinate with teachers to see that the student's education records are complete, especially when students move in the middle of a grading period, including assisting students in acquiring credits for partial work completed and access to credit recovery opportunities and compensatory education services
 - Review a student's class schedule to make sure that students are on track for graduation
 - Be familiar with student support resources within the school and district, such as the federal School Nutrition Programs, tutoring services, and counseling services that are available for students in foster care
 - Be familiar with the extracurricular activities that are available and make the students and caregivers aware of the activities and transportation options available

28

AAL and GAL/CASA Access to Child and Education Records

- Attorney ad litem (AAL): Section 107.012 of the Family Code requires that an attorney ad litem be appointed to represent the legal interests of a child when DFPS asks to be made the child's legal parent or seeks to have the parent's rights to the child terminated.
- Guardian ad litem (GAL): Section 107.011 of the Family Code requires that a guardian ad litem be appointed to represent a child's best interests when DFPS asks to be made the child's legal parent or seeks to have the parent's rights to the child terminated.
- Court Appointed Special Advocates (CASA): CASA are trained volunteers from the community who are appointed by a judge to serve as guardians ad litem (GAL).
- Section 107.006 of the Family Code provides that in conjunction with an appointment, the court shall issue an order authorizing the AAL and GAL/CASA to have immediate access to the child and any related records, including school records.

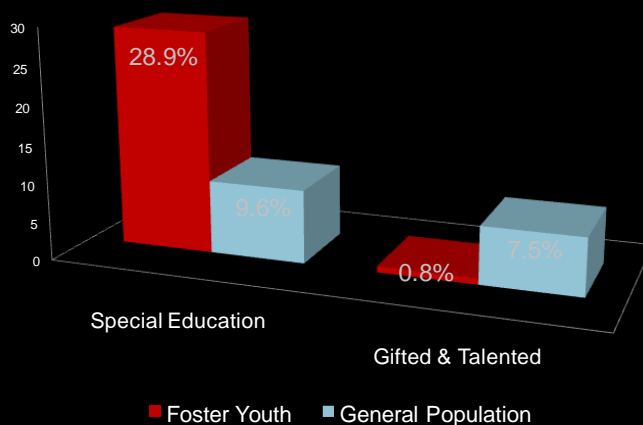
29

Special Education

- Higher rate in SpEd
- Preference for foster parents as surrogate parents
- CASA as surrogate parent
- Enrollment and placement issues



Texas Foster Youth More Likely to be in Special Education and Less Likely to be in Gifted & Talented



Source: 2008-2009 PEIMS data

Preference for Foster Parents as Surrogates

- TEC §29.015(a) – district shall give “preferential consideration” to foster parent when appointing surrogate parent
- TEC §29.015(b) – foster parent may act as parent of a child with a disability if:
 - DFPS is PMC or TMC of child
 - child with foster parent at least 60 days
 - foster parent has no conflict of interest
 - foster parent agrees to:
 - participate in educational decisions for child
 - complete training program for surrogate parents

32

CASA as Surrogates

- 20 U.S.C. § 1415(b)(2)(A)(ii); 34 C.F.R. § 300.519(c) – Court can appoint surrogate parent
- TFC § 107.031 – CASA volunteer may serve as a surrogate parent *if*:
 - child under DFPS conservatorship,
 - CASA volunteer is child's GAL, and
 - foster parent is not acting as child's parent under TEC § 29.015

33



Sharing Information About a Student

Who needs to know confidential information
about a student in foster care,
and what do they need to know?

School personnel who might have a “need to know”

- Superintendent
- Principal
- Teacher(s)
- School Counselor
- Director of Special Ed
- Diagnostician
- Therapists or other providers
- Coaches
- Bus driver (for transportation purposes)
- Front office staff
- Cafeteria worker (for school meal programs)
- Others

35

Information Requested by Schools

- It is generally appropriate for CPS to share:
 - current address for child
 - identity of individual with authority to enroll child in school
 - Caseworker contact information
 - birth certificate or other identification
 - Education Portfolio or Passport
 - previous schools attended
 - special education or 504 eligibility
 - immunizations
 - vision or hearing evaluations
 - current or previous IEP

36

Information Requested by Schools

- It is NEVER appropriate to share:
 - abuse/neglect history
 - fact that child was adopted
 - name of abuse reporter
 - CPS investigation details
 - biological or foster family income

37

Information Requested by Schools

- On a case-by-case determination, it *may* be appropriate to share:
 - biological family name or whereabouts
 - fact that child is in foster care (conservatorship)
 - fact that child is in a relative or kinship placement
 - fact that child lives in residential facility
 - medical history, information
 - disability or health information
 - relevant court orders
 - mental or behavioral health issues/Behavior Plan
 - medications, including psychotropic meds
 - alcohol or substance abuse history, treatment
 - Medicaid eligibility or #
 - “social history”
 - history with law enforcement or juvenile justice

38

School Readiness

CPS Policy:

All children ages 3, 4, and 5 must be enrolled in a local pre-kindergarten program or Head Start Early Childhood Education Program if available in the community and in the child's best interest

Head Start

- Foster children have categorical eligibility (along with other categories of children, such as children in the military)
 - but regions can set priorities for enrollment
 - → waiting list
- Early Head Start Program (ages 0-3) available in some regions



40

Early Childhood Programs

ECI

- Memorandum of Understanding between CPS and Early Childhood Intervention (ECI) regarding methods for referring children birth to three years of age with disabilities or delays.

Kindergarten and Pre-K

- Expanded eligibility for free pre-K offered through Texas public schools
- Letters of Verification sent to caregivers of all children who were in conservatorship as a result of an adversary hearing

41

Post-Secondary Education

- Tuition fee waivers
- Education Training Vouchers
- Extended Foster Care



Tuition/Fee Waivers

- Provides exemptions from payment of tuition and fees for foster and adopted youth
 - at Texas' state supported colleges and universities
 - waiver must be utilized before age 25

43

Education Training Vouchers

- \$5,000/year financial assistance program for youth and young adults (ages 16-23) to help them reach their postsecondary education goals
- Eligible individuals include:
 - foster youth at least 16 and likely to remain in care until age 18,
 - youth adopted from CPS after age 16, and
 - youth who enter Permanency Care Assistance after age 21
- Must meet enrollment criteria in accredited or pre-accredited institutions of higher education

44

Extended Foster Care

- Young adults who age out of foster care at 18 will continue to be eligible for Extended Foster Care.
- Youth must be 18-21 years old and meet one of the following conditions:
 - regularly attending high school or enrolled in a GED program;
 - regularly attending college or a voc./tech program;
 - participating in a program to remove barriers to employment;
 - employed at least 80 hours a month; OR
 - incapable of doing any of the above due to a documented medical condition.

45

During this legislative session...

46

Questions?

47